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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate Future)	RM-8117, RM-8030
Development of SMR Systems in the)	RM-8029
800 MHz Frequency Band)	
)	
and)	
)	
Implementation of Section 309(j) of the)	PR Docket No. 93-253
Communications Act -)	
Competitive Bidding)	
800 MHz SMR)	

To: The Commission

INFORMAL COMMENTS

Small Business in Telecommunications (SBT), by its attorneys pursuant to Section 1.41 of the Commission's Rules, respectfully submits its Informal Comments to the above-captioned matter. SBT respectfully requests that the Commission abandon its plan to auction 800 MHz spectrum and return to its rules as they existed prior to the imposition of spectrum freezes in August of 1994. In support of its position, SBT shows the following:

SBT has reviewed the "industry consensus" plan forwarded by AMTA, SMR Won and Nextel Communications, Inc., for resolving the dispute regarding 800 MHz auctions and forced frequency relocation. However, in its review of the plan, SBT noticed no indication, whatsoever, that the consensus plan was more than a "deal"

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worked out between the principals of the two industry associations and Nextel. There was no statement made within the filing that demonstrated that the plan was presented to or agreed upon by the membership of the associations.

SBT was well aware that its membership opposed both the Commission's auction plan and the consensus; both had been equal forces in boosting SBT's membership. But SBT was concerned that no one seemed to have asked the actual membership of AMTA or of SMR Won for their opinion.

SBT conducted a poll of the industry to determine what the true industry consensus might be. SBT asked individual members of SMR Won, SBT, and AMTA, their opinion. SBT even faxed Nextel, which did not reply. A copy of the survey is attached hereto. SBT asked whether the respondent preferred the 800 MHz auction as originally adopted by the Federal Communications Commission, preferred the consensus plan as put forth by AMTA, Nextel, SMR Won and PCIA, or supported a plan where the Federal Communications Commission would enforce the rules that were in place before the freezes took effect.

The overwhelming majority of the survey respondents expressed their desire to return to the Commission's Rules as they existed before the Commission enacted its freeze on August 9, 1994. Eighty-seven percent of the respondents supported the idea

of returning to the “old” Rules. Twelve percent supported the so-called “industry consensus” plan.

SBT feels that the twelve percent figure is generous to the “consensus” supporters, since many of the people expressing a preference for the so-called industry consensus also expressed a desire to obtain additional spectrum to serve their existing or potential customers. The consensus plan will not provide these companies with the additional spectrum they desire, therefore, it is SBT’s opinion that they do not understand correctly the terms of the consensus, and, if they did understand the plan, that they would not support it. Eighty-three percent of the respondents expressed a desire for additional spectrum, and 69 percent wished to cover a greater geographical area.

SBT surveyed 850 industry licensees, including members of AMTA, SBT and SMR Won, via facsimile. Respondees were also given an opportunity on the poll to record their comments on any topic of their choosing. The comments submitted demonstrated anger and frustration at the Federal Communications Commission for its perceived lack of interest in the damage that its freezes are wreaking on the small business operators. A copy of the comments is attached hereto.

IE Communications, a member both of SBT and SMR Won, lamented, “For the past three years, my plans to expand have been put in a holding pattern and are out of focus. As a member of SMR Won, I have yet to see a copy of the consensus plan. I’m

not sure how auctions will affect me. So for now, I'm sticking to my guns, and want the rules enforced that were in place before the freeze."

SBT Chairman Lonnie Danchik weighed in with his own comments which were echoed throughout the industry. Danchik stated, "The FCC has created two sets of rules, or at least two sets of interpretations for the same set of rules. The interpretation given to the majority of businesses in our industry is one of restrictions, limitations, barriers, obstacles and a very strict and rigid application of the requirements and penalties called for in the regulations. On the other hand, the interpretation afforded to a few large operators is one of permissiveness, freedom, openness, advantage and a very 'carte blanche' approach that borders on out-and-out assistance in helping them accomplish their objectives, even to the detriments of their smaller competitors."

SBT intends this to demonstrate to the Commission that the SMR industry does not stand behind the Commission's plan to auction the heavily encumbered spectrum or the consensus plan. SBT has come under criticism recently for not having proffered its own resolution to the 800 MHz situation. SBT's position on this is simple; the SMR industry has been placed, deliberately, in an untenable situation by the Commission. The industry is backed against a wall by the threat of auction and forced frequency migration. There can be no arm's length negotiation between industry leaders and the Commission because the industry is presently occupied in trying to find relief from the regulatory siege in which the Commission is engaged. Any negotiations made with the threat of

forced frequency migration and auction of encumbered spectrum looming like the sword of Damocles must, necessarily be void as any contract made under like duress.

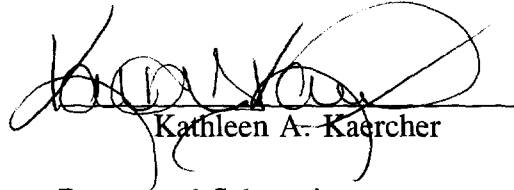
SBT respectfully asserts that the results of its poll reflect the only true “industry consensus” presented to the Commission thus far. The Commission should remove the specter of auctions of fully utilized and encumbered spectrum from the SMR industry, thaw the freezes and return to its rules as they existed prior to August 1994. The Commission should apply its construction and operation rules across the board. If the license for an SMR facility automatically cancels for failure to construct after eight months, twelve months or five years, the Commission should send identical 800A letters to all licensees upon reaching their construction milestone. Each licensee should be made to answer the question, under penalty of perjury, whether their station, large or small, was timely constructed and commenced operation. Only then will the Commission be able to say that it has achieved regulatory parity, and only then can interested parties come together to plan for the future of the SMR industry -- a future that can accommodate **all** operators, large and small, within the framework of rational Commission rules.

Conclusion

For all the foregoing reasons, Small Business in Telecommunications respectfully requests that the Commission abandon its plan to auction 800 MHz spectrum and return to its rules as they existed prior to the imposition of spectrum freezes in August of 1994.

Respectfully submitted,
SMALL BUSINESS IN TELECOMMUNICATIONS

By



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Dated: December 13, 1994

Small Business in Telecommunications Survey Results

Individuals Preferring the FCC's 800 MHz Auction Rules	0%
Individuals Preferring the "Consensus" Plan	12%
Individuals Preferring the Enforcement of FCC Rules Prior to the Freeze . . .	87% ¹

Individuals Expressing a Desire for	
Additional Spectrum	83%
Additional Area	69%

Respondees by Organization

SBT Members	62%
SMR Won Members	21%
AMTA Members	19%

¹ Certain respondents failed to choose any option.

SBT Says

Tell Us What You Really Want!

As the trade magazines have recently pointed out, several organizations have claimed that they represent your interests. Small Business in Telecommunications is conducting this fax poll to determine what you **really** want to see happen in our industry.

- ☐ I would prefer the 800 MHz auction as originally adopted by the Federal Communications Commission.
- ☐ I would prefer the consensus plan as put forth by AMTA, Nextel, SMR Won and PCIA.
- ☐ I would prefer that the Federal Communications Commission enforce the rules that were in place before the freezes took effect.

To serve my customers better, I need:

- ☐ More spectrum
- ☐ The ability to expand my coverage area beyond my currently licensed boundaries

That's it, those are the questions. They're pretty simple, aren't they? We'll even give you space to add your comments. Please fax your responses to Brown and Schwaninger, toll free at 1-888/FCCREGS. Results will be announced at SBT's Fall Meeting in Dallas, Texas, which will be held November 7 -8, 1996. For reservations and information, call Tara Williams at 202/223-8728.

Comments:

Company Name _____ Location _____

SBT Poll Comments

Applied Technology Group	The "true" Industry consensus is that FCC is out of control and do not know what they are doing.
IE Communications	For the past 3 years, my plans to expand have been put in a holding pattern and are to of focus. As a member of SMR One, I have yet to see a copy of the consensus plan. I'm not sure how auctions will affect me. So for now, I'm sticking to my guns, and want rules enforced that were in place before the freeze.
AALCOM Comms.	If everyone was required to follow the rules as set forth by FCC, a lot of small dealers would have some additional spectrum now. A number of existing licenses are only there because of paper loading and other violations in construction.
Vantek Communications	I don't know what is in the consensus plan other than what I read in the trade papers. If it works for me, I'm all for it.
JSM Tele-Page, Inc.	It is hard enough to compete with the big boys with stock supported deep pockets without having to fight the government trying to take away our spectrum and give it to our competitors. It is unAmerican and unfair.
Atlantic Communications	I need additional 220MHz Channels so that my system will cover my service area. My present system doesn't cover my service area.
Industrial Comms. Co.	NO AUCTION FOR 800MHz!!!!!!!
Auto-Comm Engr. Corp.	Provided the FCC concurs, we prefer the consensus plan as set forth by SMR Won, PCIA, Nextel & AMTA which will give incumbents premium channels for added growth, reimbursement for costs incurred in swapout transactions and eliminate the necessity of an auction. A win-win situation for the incumbents and for PCS [Nextel]
Procomm-AZ	a. Would like to have ability to get some channels from the "Paper Loaders" who have never constructed, yet prevent legitimate providers to get access to the frequencies. b. Would like to be able to move some channels to other geographic locations for better coverage for customer usage. c. Would like to be able to resolve the "co-channel" licensing problems created by the Commission and the frequency coordinators on 800 MHz channels. d. Would like to have implementation of high power on the 12.5 KHz channels on UHF 450-470 MHz.
Eden Communications	As reflected by my selections, I need additional spectrum, just to go on servicing our growing customer base in our own market area.

Futronics, Inc.	Need do something to lift "FREEZE" to get "on with it!". Very frustrating to go over two years without a plan.
JPJ Electronics	My long term business plan was based on my above mentioned preference, However: I am not against the consensus plan if it would eliminate the auction.
Fresno Mobile Radio	Can't expand our systems, can't move our systems to other sites. The other guys have done a very good job of ??? their competition with help from the <u>FCC</u>.
CommNet Comms.	The FCC has created two sets of rules, or at least two sets of interpretations for the same set of rules. The interpretation given to the majority of businesses in our industry is one of restrictions, limitations, barriers, obstacles and a very strict and rigid application of the requirements and penalties called for in the regulations. On the other hand the interpretation afforded to a few large operators is one of permissiveness, freedom, openness, advantage and a very "carte blanche" approach that borders on out and out assistance in helping them accomplish their objectives, even to the detriment of their smaller competitors
Chadmore Wireless	The "FCC" arbitrary application of the rules and "verbal rulemaking" has caused licenses to be lost and the ability to construct severely limited. When the licenses were granted there were rules outlining their construction which have had no time to plan/understand their implications before being subjected to their limitations
Centre Comms.	We would like to provide coverage to other areas that have no coverage. However, with no new licenses this is not possible. Our customers are upset that we can not get a license to help them with their radio systems. *Simply Put: The freeze has done more harm than good to radio users*
Genesee Business Radio	Would like rules enforced and limit contiguous loading the real roaming, not just because channels are contiguous.
4X Corporation	In my market area there is only 5% of the total 800MHz spectrum constructed that is licensed. With cellular PCS there is not enough customers to really justify the cost involved with bringing a system like Nextel's to market.
Tower Communications	We need extra channels in some areas and we also need to expand our operating are
Lynn Clark	Small Business Build this country, let us have a chance
Banks Tower	We support all oppositions to upper band auction (861-865) and mandatory relocations.

Coast Repeater Rentals	I would prefer that the FCC had not granted the waiver to Nextel in the Monterey Co area of CA that let them warehouse the available frequencies for 5 years. None have been constructed, instead they are converting existing high sites from analog to iden to force their customers to buy new digital units. I would put these people
Quality Mobile Comms.	Its unfortunate that the FCC Chairman's position is an appointed one. I wish it was an elective position so we could vote the XXXX out of office!! After what the FCC has allowed to happen with 800 MHz over the last 3-5 years, and its present course of selling "air" to highest bidder, its a wonder that anyone follows the rules or maintains any sense of respect for the agency. My own level of respect for them is at its lowest point in my 20+ years in the industry
Middle GA Trunking	Like most operators I am not requiring the addition of several hundred channels from coast to coast. What would help me the most would be 2 or 3 channels around my outer service area. In certain locations that would provide my customers coverage in areas that they need to operate none effectively in their business. I am \$10/mth for 5 systems Motorola (New Nextel) charges \$16 for 1 system and up to \$30/mth for the same coverage area as my 5. Who saves the customers/tax payer the most money?!!!! Who is serving the public interest better.
Clarus Communications	Need more flexibility of tower sites on coverage
P.R.I.M.E.	Question: Since Nextel completed its wide area filing in my area and since they are only stock piling channels that they are not using then if I obtain several channels from the auction, Do I need to give them a channel since they are not utilizing all of "their" wide area channels - ? I cannot fight them legally alone only if we all go after the proper distribution of the channels.
Graybill Electronics, Inc.	Instead of using our industry alone to address the national debt, perhaps we should suggest they auction the skies to the airlines and the waterways to the maritime industry. It would hopefully take sore of the burden off us! In reality is there any difference??
Sal Dragotta	It would be very nice if the Federal Communications Commission would enforce and honor its legal commitments.
Advanced Communications	This long standing freeze of over 2 years is destroying our business. Nextel gets stronger every day because they have a wide area license. Those of us with one fall behind. Returning 7000 subscribers is out of the question.

UPDATE ON ASSOCIATION POSITION

Lately the industry has been treated to a concerted effort by AMTA, SMR WON and Nextel Communications, Inc. to forward something called a "consensus" to resolve the dispute regarding 800 MHz auctions and forced frequency relocation. For all of the claims and talk about this joined position, your association, SBT, has discovered that many members and industry participants are unclear as to the specifics of the "consensus". Since other associations are touting this plan, while SBT has opposed the adoption of this licensing scheme, SBT believes that it is important that its members are fully informed as to the reasons for the SBT board's opposition.

The Plan

The Plan calls for local 800 MHz operators to join together to negotiate with Nextel to exchange upper 800 MHz channels for lower channels, the theory being that the exchanged lower channels would be employed to support an application for a EA-wide license by the local operators, which the FCC might grant (this method of joining in support of a single EA-wide application is referred to as "aggregation"). Then the operators would split up the EA-wide license among themselves by private contract ("disaggregation"). The idea is that the joined local operators would gain the ability for their customers to roam throughout the EA to receive service from other, joined operators. The supporters claim that the EA/local operators could avoid the devastation of auction and wind up with a piece of an EA-wide license, which those same supporters claim is about all the local operators should hope for today.

The Problems

Although the Plan might appear inviting on first blush, SBT's board has considered all of the ramifications of adoption of the Plan as the

basis for future licensing of SMR channels and notes a number of problems. Those problems are:

Disparate Interests Among Local Operators: The alleged consensus presumes that each of the local operators has the same number of 860 MHz channels in the upper block, or that Nextel will provide all negotiating operators with the same number of identical channels for use in EA-wide licensing. If the biggest local operator has ten 860 MHz channels, and the smallest has only one, it is unlikely that Nextel will be willing to provide a ten-channel block of lower channels across an EA in exchange. If Nextel isn't willing to do this, then the operator with the most to lose (the one with greatest number of upper channels) will also get the least from the deal. SBT believes that this is an unrealistic starting place for fair negotiations.

Desire For EA-Wide License: The plan also presumes that the local operators want an EA-wide license. SBT believes that operators want more channels, less intrusion from short-spaced systems, better offering of services and equipment and technology from suppliers, and a fair opportunity to compete. What most operators don't want or can't afford is the right to construct throughout sparsely populated areas to meet construction across an entire EA -- either individually or as a group. But even if local operators want EA-wide authority, the "consensus" via aggregation/disaggregation will not provide a true EA-wide authority. Instead, operators will (through disaggregation) wind up approximately where they started.

EA Border Problems: The plan does not explain what happens to a local operator's system that extends across EA boundaries. Will you maintain your right to operate across your present service area? Or if your system

presently extends across arbitrary EA boundaries, will you have to pull back coverage to only de minimis extension? And what will that do to your business?

Forced Association: The "consensus" requires that operators across an entire EA get together to negotiate as a group. This requirement flies in the face of the very independence enjoyed by local operators and the basis for most operators very existence. One should not be forced to join a group under any circumstances. Certainly, no law should be passed which requires forced association or which punishes a company's lawful choice to remain independent.

Warehoused Spectrum: The plan is not contingent on the release of warehoused spectrum by wide-area operators. In fact, the plan rewards companies which have engaged in this practice, by assigning value to the "trading stock" to be employed by the consensus. As a clear demonstration of this, you only need to see the supportive comments that suggest that the FCC should not require that trading channels be constructed prior to assignment. Just what the warehousing companies need, another waiver of the FCC rules.

Perhaps the biggest problem with the alleged "consensus" is that it does not advocate any action which is not possible through private contract. If local operators want to provide roaming, they can. If they wish to swap frequencies among themselves and other operators (even Nextel) they should be able to perform this activity without government intrusion. If systems are improperly short-spaced, the FCC should entertain petitions to correct the situation. And no rules should be created which reward companies which have engaged in blatant spectrum warehousing.

SBT believes that the touted "consensus" is fraught with problems, inequities, improper advantages for spectrum warehouseers, and opportunities for abuse. SBT believes that its members demand real solutions, instead of the illusion of togetherness and cooperation that characterize the consensus. If the Plan had even a modicum of a chance for true resolution of the

industry's problems, SBT would seriously consider joining in support.

What one must consider in its assessment of the circumstances which have led the industry to this position is the following: (1) have the FCC rules been applied equally to all licensees? (2) have all operators been provided with the same opportunities? (3) were small operators denied historical rights and privileges, without benefit of rule making or comment? (4) did the FCC's creation of the freeze result in greater inequalities among operators? (5) did the FCC's interpretation of its loading rules result in an unfair advantage to ESMR operators? (6) what remedies to these past ills are offered within the alleged "consensus"? SBT believes that the answer to Number (6) above is clearly, NONE. And if this is the logical answer to that question, it is quite difficult for reasonable persons to join in support.

SBT is seeking real solutions, including remedies for past failures by the FCC to protect our segment of the industry. SBT seeks to recapture the rights and dignity of the smaller operator, promoting his position as a vital portion of the telecommunications marketplace in the future, and ending the erosion of opportunity for all but the wealthies of corporations. It is not sufficient to claim "Peace In Our Time" if the price is capitulation to the demands of industrial bullies. Peace at any price is too expensive to bear.

SBT has offered to discuss its concerns with representatives of AMTA and SMR WON. Thus far, only SMR WON has taken us up on our offer. Other associations have talked about the problem of fragmentation of the marketplace and the need to appear united before the FCC. Unification can be a powerful weapon in battling for regulatory equality and its value should not be minimized. However, unification cannot be the sole basis or even given the highest priority in these ongoing discussions. SBT's primary activity must be focused on realistic solutions, fairness, and equality under the law. The "consensus" does not provide these vital elements and, therefore, SBT respectfully does not join in support of the alleged consensus.

Lonnie Danchik, Chairman

CERTIFICATE SERVICE

I hereby certify that on the thirteenth day of December, 1996, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

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